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In the Supreme Court of the United States

OCTOBER TERM, 1974

Nos. 74-1424 and 75-41

YELLOW FREIGHT SYSTEM, INC.,
Petitioner,

and

LOCAL UNION NO. 823, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,
Petitioner,

vs.

BILLY G. BUTLER,
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITIONS FOR WRIT OF CERTIORARI

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YELLOW FREIGHT SYSTEM, INC.,
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QUESTIONS PRESENTED

I. A. Is it ever proper for a majority of a union to deprive the minority of contractual benefits to which they are clearly entitled?

B. Should the standard of conduct in an unfair representation case be something other than the duty fairly to represent the individual union member without arbitrariness, discrimination or bad faith?

II. Should the District Courts be denied the flexibility provided by this Court's decision in *Vaca* v. *Sipes*[1] to fashion appropriate remedies in unfair representation cases?

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1. 386 U.S. 197 (1967).

STATEMENT OF THE CASE

Respondent adopts as an accurate statement of the case the recitations by the Court of Appeals in its opinion of the basic facts (YA. 2-3),[2] the applicable contract provisions in the collective bargaining agreement (YA. 13-16) and the nature of the representation of Billy G. Butler by the Union (YA. 19-20).

The statements presented by the petitioners, in contrast to the statement of facts of the Court of Appeals, understandably ignore the clarity of the collective bargaining agreement as to Butler's entitlement to full seniority and the discriminatory nature of the Union's attitude and actions toward Butler. Consequently, respondent offers its view of the facts consistent with the findings of the District Court and jury and the Court of Appeals.

This case involves the seniority which the terms of the collective bargaining agreement afforded to Butler, an over-the-road truck driver, when the business of his employer, the Watson-Wilson Transportation Company, was acquired by Yellow.

Yellow's operating authority had extended only to Amarillo, Texas, whereas that of the Watson Line had extended beyond Amarillo (A. 154). Yellow in order to obtain this extended authority had agreed to purchase Watson-Wilson in 1965, receiving temporary authority from the Interstate Commerce Commission to operate the latter in March of that year (A. 80-81, 128-129).

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2. References to Appendices herein cited are references to Appendices found in petitioner Yellow's Petition for Writ of Certiorari designated "YA", petitioner Union's Petition for Writ of Certiorari designated "UA", the printed Appendix in the Court of Appeals designated "A" or the trial transcript designated "R".

Yellow and Watson had a collective bargaining contract with the Teamsters Union in effect during the merger process which provided with respect to mergers as follows:

> §3(a)(1) If both carriers involved are solvent then the seniority lists of the two Companies should be dovetailed so as to create a Master Seniority List based upon total years of service with either Company. This is known as dovetailing in accordance with years of seniority. * * *
>
> * * *
>
> §3(a)(8) The parties acknowledge that specific situations may arise which may not be covered by the above rules, or in which the parties may feel that different treatment of the problem is necessary. * * * The Change of Operations Committee * * * shall have the authority to add to or modify these rules in specific situations presented to it (A. 234-236).

Due to its impact upon the 350 to 400 drivers (A. 140-141) involved, the effect of such a merger upon the seniority of the employees of the two lines was the subject of a meeting of representatives of the employers and local unions involved, identified as the Change of Operations Committee. At a meeting in Chicago, Illinois, on June 16, 1965, this committee issued its formal ruling (UA. 10) that:

> ". . . All displaced employees . . . shall be placed on the master seniority list with the original date of hire, regardless of the terminals they may have worked in where they had accumulated only terminal seniority . . . ."

No such "master seniority list" combining Watson and Yellow employees was then prepared; instead separate lists were maintained for the Watson employees and for the Yellow employees (R. 161). On June 30, 1965, the em-

ployees on the separate Watson list received a letter notice of the availability of jobs at some eight locations, including Baxter Springs, Kansas. Butler returned the form letter notice with an indication that Baxter Springs was his first choice (A. 69). After all the letters had been returned, assignments to available jobs were made in accordance with the man's preference and consistent with his seniority. As a result of this first letter, some nine former Watson employees obtained work at Baxter Springs.

On August 5, 1965, a second series of letters were sent out to all Watson employees who did not have enough seniority to obtain the job of their choice in response to the June letter (A. 146-147). Again, Butler indicated Baxter Springs as his first choice (A. 70). Again, Butler was advised that he could not be placed at Baxter Springs at the time since there were many other bidders with higher seniority (A. 71-72). As a result of that second bidding, an additional nine former Watson drivers secured employment at Baxter Springs. During this period had the dovetailing provided for in the contract been accomplished Butler would have been working.

By August 3, 1966, Yellow's authority from the Interstate Commerce Commission to operate Watson-Wilson had become final. Still the former Watson drivers continued to be carried on a separate seniority list. It was not until after another meeting held in Chicago on September 20, 1966, that some "dovetailing", combining names from the separate lists, was effected. The seniority roster posted on September 26, 1966 included the first group of nine Watson employees dovetailed among the Yellow employees by their company seniority dates (A. 162-194). The second group of nine remained at the bottom of the list (A. 82), credited with seniority only from their arrival at Baxter Springs. Certain of the employees in this second group

then filed grievances with the Union and charges with the National Labor Relations Board protesting their reduced seniority (A. 62). On the day these grievances were to be heard, Mr. Roy Williams, an officer of the International Union, told Mr. William Kitts, the Business Agent of Local 823, that Kitts was mistaken in not affording the second group their company seniority, and that all employees should have been dovetailed (A. 197). Further discussion of the grievances was abandoned and the grievants succeeded in obtaining their full company seniority (A. 87, 92, 120). Finally, on December 16, 1966, Yellow posted a seniority roster which showed all former Watson employees dovetailed among the Yellow drivers (A. 82) with full company seniority—all except Butler (A. 62, 92).

On March 15, 1967, Butler, along with several other Watson-Wilson men, received a letter of recall, calling him for work at Baxter Springs, Kansas (A. 75, 148-149). In the interim, Butler had turned down several jobs because they did not afford him his full seniority (A. 72-73). Yellow had in the meanwhile been hiring "casuals" to fill in for men because of vacation, illness, or for extra loads, etc. (A. 158). Butler reported to work at Baxter on March 27, 1967 (A. 754). It should be noted that on his company record Butler's seniority date was May 6, 1959 and the record was so marked (A. 804).

On July 5, 1967, having then accumulated his total moving expenses, Butler filed formal grievances complaining that he was not being afforded his full company seniority, that junior men had been hired at Baxter ahead of him (A. 94) and for reimbursement of his moving expense. He first discussed the grievance with the president of the local, Mr. Floyd Webb, who told him that he would "guarantee" that it would be lost when it came up for hearing (A. 944). When Butler asked to attend the hear-

ing on his grievance, he was told that he couldn't go (A. 97). The hearing consisted of the reading of the grievance by Kitts and the presentation by the employer of what it purported to be Butler's reply to the June 30, 1965 bid, that which first offered Watson drivers employment at Baxter Springs. Contrary to Butler's testimony (A. 69) that he had marked the reply form to indicate his desire to be employed at Baxter Springs, the employer apparently exhibited a copy of the form on which the only box marked was that indicating that the recipient did not wish to be considered for any of the offered locations (A. 151, 192, UA. 26). No one present denied the authenticity of such letter. Butler's response to the August 5 letter, also indicating a choice for Baxter, was not mentioned (UA. 28).

Butler first learned of the results of the hearing in a conversation with Kitts who advised that he had been turned down because of a letter in which he had refused to come to work at Baxter (A. 98). There was no discussion of any subsequent change of operations decision or period of temporary control. This was followed by a letter from Kitts advising that the grievance had been denied and that Butler's assignment to Baxter had been in compliance with a change of operation decision. All Butler's subsequent efforts to obtain assistance from his union official were unavailing (A. 98, 107), requiring him to seek the assistance of private counsel (A. 107).

In April of 1970, there was a general lay-off of employees at the Baxter Springs terminal. When Butler learned that men with less company seniority were being recalled to work ahead of him, he complained to Kitts who asked him "to go back to Wyoming, and get out of his hair." Kitts also acknowledged that he had scratched Butler's name off of the seniority list being used for the recall (A. 105). Butler was ultimately recalled and continued to

work with his diminished seniority until the District Court below declared him entitled to his full seniority. According to the verified Petition for Order to Show Cause filed October 2, 1973 (A. 45) representatives of the Union posted at the terminal, over the signature of Kitts, a notice that Chief Judge Becker "took the position that Billy G. Butler's seniority date is May 6, 1959" and inviting the other drivers to file grievances about such ruling. As a result of such activity and other more direct urgings, the Petition alleged some fourteen other drivers filed identical grievances. In response, Chief Judge Becker entered temporary (A. 48) and permanent (A. 52) injunctions against the prosecution or advocacy of grievances in opposition to Butler's seniority status as adjudged or otherwise contravening the lawful orders of the Court.

After the trial in the District Court on the breach of contract and unfair representation causes of action the jury returned verdicts against both defendants. The jury awarded $6,500 actual and $30,000 punitive damages against the Union, and $28,000 actual and $7,000 punitive damages against Yellow. The award of the punitive damages against both defendants was reversed by the Court of Appeals, but in all other respects, the actions of the District Court were affirmed.

ARGUMENT

Respondent believes that petitioners have wholly failed to establish any grounds upon which review of this case by this Court is justified or necessary.

This case in plain and simple terms involves the seniority which the terms of the applicable collective bargaining agreement clearly afforded Butler but which his employer and union chose to subvert during the processing of his

grievance over loss of that seniority in a manner clearly evidencing arbitrariness, discrimination and bad faith. Both the District Court and the Court of Appeals determined that the collective bargaining contract was not the least bit ambiguous and the District Court, its jury and the Court of Appeals found that the contract had been breached by Yellow and that the fair representation standard imposed upon the Union had been violated.

The petitioner Union's argument that this case deserves review because it involves important questions on the internal political processes of a local union does make the case appear to be more interesting but the questions raised relating to internal union politics, in fact, have nothing to do with this case and are totally irrelevant.

The Union's defense that its attitude and actions toward Butler were politically motivated can be relevant only if the applicable terms of the collective bargaining contract are totally ignored. The contract which was found by the District Court and the Court of Appeals to be wholly unambiguous provided that Butler was entitled to be granted his company seniority based upon his original employment date with Watson in May of 1959. In short, the simple response to the Union's argument that the majority must rule in a union is that it is never proper for a majority of a union to deprive the minority of *contractual benefits* to which they are clearly entitled. *Corcoran* v. *Allied Super Markets,* 498 F.2d 527, 530 (8 Cir., 1974) A review of the applicable contract provision set forth in the statement of the case herein will reflect just how clear and unambiguous the contract was on seniority.

Petitioner Yellow more directly attacks the issues in this case by raising the question in its Petition of the need for changing the standards for determining liability in unfair representation cases. However, this Court has con-

tinuously held for over twenty years that a breach of the duty of fair representation occurs when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory or in bad faith. *Vaca* v. *Sipes*, 386 U.S. 171, 190 (1967); *Humphrey* v. *Moore*, 375 U.S. 335, 349-350 (1964); *Ford Motor Co.* v. *Huffman*, 345 U.S. 330, 337-339 (1953). This standard has worked for twenty years and is no less viable today.

The essence of Petitioner Yellow's argument, as supported by that of the Union, seems to be alternatively that either the standard should be changed so that the Union, out of political necessity, can act in an arbitrary and discriminatory manner or in bad faith as to members of the bargaining unit, or that under the facts of this case the Union's conduct was not arbitrary, discriminatory or carried out in bad faith. The first suggestion is incredulous, and the second, which actually relates to the sufficiency of the evidence or the nature of the facts in the case, was appropriately handled by the District Court and jury and, being wholly factual in nature, is hardly a matter requiring or deserving review by this Court.

It should be noted that having reviewed the evidence the Court of Appeals found in Butler's favor while recognizing the parameters of the standard of conduct set out in *Vaca* v. *Sipes, supra*. The Court noted "[w]e stress . . . that we do not hold here that the mere fact that a District Court ultimately disagrees with a union's interpretation of a collective bargaining agreement is sufficient in and of itself to establish a case of unfair representation." (YA. 20). The same principle as stated in *Vaca* v. *Sipes* at 386 U.S. 195 was that a "breach of duty of fair representation is not established merely by proof that the underlying grievance was meritorious. . ." In Butler's case, however, the lower courts and the jury, weighing the union conduct

in light of the standard, justifiably found that the Union's conduct was arbitrary, discriminatory, or carried out in bad faith. Respondent believes those hard core findings of fact are truly at the heart of the Petitioners' complaints set forth in their petitions as opposed to their assertions about the need for a different standard of conduct.

A review of the jury's verdicts assessing both actual and punitive damages against both Yellow and the Union, including a disproportionately large amount of punitive damages against the Union, clearly indicates that from an evidentiary and factual standpoint the jury considered both parties' conduct, and particularly that of the Union, to have been worse than merely arbitrary, discriminatory or reflecting bad faith. In this respect it should be remembered that at the heart of the decision in this case is the jury which was given the responsibility and duty to measure the conduct of the parties against the appropriate legal standard set down by this Court.

Petitioner Yellow claims that *Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America* v. *Lockridge,* 403 U.S. 274 (1971), a post *Vaca* decision of this Court, substantially altered the standard of conduct in unfair representation cases. Based upon our review of *Lockridge,* we find this assertion to be totally without merit.

The focus of the Court in *Lockridge* was on the jurisdictional question of preemption. The Court's reference to the standard of conduct established by *Vaca* v. *Sipes* was limited and, in respondent's view, did nothing more than affirm the standard of *Vaca.* The Court in *Lockridge* at 403 U.S. 300-301 stated:

> "For such a claim to be made out, Lockridge must have proved '*arbitrary or bad-faith* conduct on the

> part of the Union.' *Vaca* v. *Sipes, supra,* at 193, 87 S.Ct., at 918. There must be 'substantial evidence of fraud, *deceitful action or dishonest conduct.' Humphrey* v. *Moore, supra,* 375 U.S., at 348, 84 S.Ct., at 371. * * * Whatever the underlying motive for expulsion [of Lockridge from the Union] might have been, this case has been submitted and tried on the interpretation of the contract, not on a theory of *discrimination.*" (Emphasis added)

Clearly, this language recognizes and affirms the *Vaca* standard while describing alternative degrees of culpable conduct, and most importantly affirms the standard applied by the lower courts in this case.

Petitioner Yellow further cites *Steele* v. *Louisville & Nashville R.R. Co.,* 323 U.S. 192 (1944) suggesting that it indicates a different standard. Aside from the fact that the *Steele* case dealt with a situation involving a union's representation of workers who were not members of the union, a fact distinguishing it from this case where Butler was a member of the Union and specifically covered by the contract, respondent finds the *Steele* case to be consistent with the standard set out in *Vaca* v. *Sipes, supra, Humphrey* v. *Moore, supra,* and *Ford Motor Co.* v. *Huffman, supra,* which cases further and more clearly defined the standard after *Steele.* Respondent would suggest that any reference to hostility in *Steele* was made in the context of the racial discrimination there involved. The "hostility" arising from the racial discrimination there involved was merely descriptive of the specific facts of the case and termed by the Court as "invidious."

Petitioner Yellow further requests the Court to grant certiorari to review the Court of Appeals decision with respect to the statute of limitations question involved herein.

The District Court held that the action against Yellow and the Union was based on a written contract and consequently that a five-year period for actions based on written contracts applied. The Court further held that under the doctrine of *Vaca* v. *Sipes, supra,* 386 U.S. at 186-187, Butler had no "fully vested" cause of action against Yellow or the Union until Butler had exhausted the grievance procedures provided for in the contract. Since the adverse Grievance Committee decision of August 2, 1967, was rendered within five years of Butler's commencement of suit on June 8, 1972, the Court held that the suit was not barred. The court of appeals agreed with the analysis.

Both of the lower courts in this case were correct in following the court's decision in *Vaca* v. *Sipes, supra,* and their reasoning is absolutely appropriate. The cause of action as to both Yellow and the Union is premised on the written collective bargaining agreement. As to petitioner Yellow, the cause of action was conceived on March 29, 1967, when it initially breached the collective bargaining agreement with respect to Butler's seniority. Nevertheless, the agreement in itself provided for a process or mechanism to resolve disputes or potential disputes and that process, the grievance procedure, was a part of the written agreement. The carrying out of the grievance process merely meant the parties were operating within the framework of the contract in an on-going relationship governed thereby. In a sense one could say the contract lived. To be sure, had Butler immediately filed suit against Yellow before filing his grievance, his case would have been dismissed due to his failure to exhaust his contractually provided administrative remedies. Further, as the district court and court of appeals determined, Butler was clearly entitled to presume that his seniority rights emanating from the contract would be fully protected by

the Union through its representation of him in the administrative process provided by the contract.

The lower courts' perception of these facts led them to properly determine that the causes of action against both Yellow and the Union were clearly based on and emanated from the collective bargaining contract. Thus, the causes of action against both Yellow and the Union did not accrue until Butler's grievance was rejected in August, 1967, and the necessary condition precedent to suit had been met. *Vaca* v. *Sipes, supra; Republic Steel Corp.* v. *Maddox*, 379 U.S. 650, 653 (1965); see also *Dill* v. *Greyhound Corp.*, 435 F.2d 231, 237 (6th Cir., 1970), *cert. denied*, 402 U.S. 952 (1971).

Respondent believes that the decisions of both of the lower courts herein clearly follow the prior decisions of this court setting down guidelines for the lower courts for handling unfair representation types of cases and instructing those courts to fashion appropriate remedies to foster the policies underlying federal labor law. Court of Appeals Opinion (YA. 6-8), quoting *Vaca* v. *Sipes, supra; Textile Workers of America* v. *Lincoln Mills*, 353 U.S. 448, 454-455 (1957). The exact approach suggested by *Vaca* has produced the proper action by the lower courts in this case including proper consideration by them of, and application of the appropriate statute of limitations in development of a viable workable remedy to protect Butler's rights guaranteed by the federal labor law. Clearly, the flexible standards of this court are working and do not need changing. Perhaps, the only alternative to the type of result reached in this case on the choice of the statute of limitations is enactment by Congress of a federal statute of limitations. This is true because even if the characterization of the cause of action is made uniform, the various

states[3] will still have statutes providing different periods of limitations for the same cause of action. Moreover, it is questionable whether there should be a uniform characterization because factual patterns will vary on a case by case basis, and the uniform characterization might well hamper the district courts in fashioning workable remedies in the variety of potential situations which might arise under widely varying contractual arrangements. In any event, Congress is the appropriate form.

Respondent cannot close without saying that it is unfortunate that the Court of Appeals in this case felt it necessary to disturb the jury verdicts granting punitive damages against both defendants, which disproportionate verdicts indicated efforts by both the District Court and the jury at fashioning remedies against Yellow and the Union appropriate relative to their respective conduct. The jury awarded $6,500 actual and $30,000 punitive damages against the Union, and $28,000 actual and $7,000 punitive damages against the employer.

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3. It is interesting to note, however, that in Missouri, for example, where the District Court in this case was located, the period of limitations for actions on written contracts, oral contracts, torts and liabilities created by statute is five years. Section 516.120, R.S.Mo. 1969.

CONCLUSION

The Petitions for Writ of Certiorari should not be granted because the decision of the Court of Appeals for the Eighth Circuit is not in conflict with any decision of this Court. Further, the Court of Appeals has decided the issues raised entirely in accordance with principles laid down by this Court and in harmony with decisions of the other Courts of Appeals which have rendered decisions on the issues herein raised.

Respectfully submitted,

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